

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2380

December 10, 1980

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STATE OF NEW JERSEY
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December 10, 1980

1. TEXT OF AMENDED DIVISION REGULATIONS ADOPTED JULY 3, 1980.

Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, pursuant to the authority of N.J.S.A. 33:1-1 et seq., amends and supplements Division Regulations Subchapters 4, 20, 23, 24, 26, 33, 36 and 40 by adoption, effective immediately, of certain Regulations substantially as proposed on June 5, 1980, 12 NJR 343 (b) with inconsequential structural or language changes or substantive changes not detrimental to the public.

Additions to the Regulations are indicated by underlining; thus; deletions are indicated in brackets; ~~[thus]~~.

SUBCHAPTER 4. ISSUANCE OF THE TRANSFER OF MUNICIPAL RETAIL
LICENSES OTHER THAN CLUB LICENSES BY THE DIRECTOR

* * * * *

13:2-4.3 Fees; new or renewal licenses

Where application is made for a new license or for a renewal of a license, there shall also be submitted supplemental application forms (copies may be obtained from the director), fully executed in duplicate and accompanied by:

1. A fee of [~~\$50.00~~] \$55.00 in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control; and

2. A certification from the municipal clerk or other responsible municipal official stating that the municipal license or renewal fee has been paid and the amount of such fee.

* * * * *

13:2-4.9 Refund of fees

If the application for new or renewal license is denied for any reason whatsoever or withdrawn statutory refund of 90 per cent of the fee deposited with the municipality shall be made by said municipality to the applicant. The remaining 10 per cent shall be deemed an investigation fee and shall be retained by the municipality. The [~~\$50.00~~] \$55.00 fee accompanying the supplemental application shall be retained by the director.

* * * * *

SUBCHAPTER 20. TRANSPORTATION BY LICENSEES; TRANSIT INSIGNIA

* * * * *

13:2-20.11 Affixing transit insignia to vehicle

(a) Except as otherwise provided in this rule, transit insignia, immediately upon receipt, must be directly and securely affixed to an unmovable window either at the rear or on the left side of the vehicle for which such insignia has been issued, in the lower left corner of such window, in a manner not to interfere with the driver's view. On vehicles without such unmovable rear or side window, such insignia shall be affixed to the exterior of the body on the left side thereof. In either event, such insignia shall be clearly visible at all times.

(b) In lieu of affixing the insignia in the manner prescribed in subsection (a) of this section, it may be carried in the vehicle while engaged in the transportation of alcoholic beverages, provided an inscription is painted on the exterior of the body of the vehicle on the left side thereof, clearly visible at all times, which inscription shall, in letters not less than one inch in height and of proper and proportionate width, indicate the number of the current insignia and the date of its expiration in form as follows (inserting the appropriate number and year):

STATE OF NEW JERSEY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

TRANSIT INSIGNIA NO.....
EXPIRES [APRIL 30], AUGUST 31, 19.....

* * * * *

13:2-20.14 Term of transit insignia; renewal

All transit insignia and special transportation permits expire on [April 30] August 31 following their issuance unless previously terminated by order of the director or by surrender, revocation or expiration of the license. Renewals must be applied for in the same manner as new insignia or permits.

* * * * *

SUBCHAPTER 23. CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES

13:2-23.1 Serving minors and intoxicated persons

(a) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the [age of 18 years,] legal age to purchase or consume alcoholic beverages, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

(b) No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person actually or apparently intoxicated, or permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises.

* * * *

Delete] [13:2-23.8 Contraceptives]

Delete] [No licensee, except bona fide pharmacies to the extent that they may be duly authorized by law, shall sell, distribute or possess, or allow, permit or suffer the sale or distribution, or the possession for the purpose of sales or distribution of any prophylactic against venereal disease or any contraceptive or contraceptive device, either chemical or mechanical, or possess, allow, permit or suffer any mechanical device for such sale or distribution, in or upon the licensed premises or any other premises used in connection therewith.]

* * * *

13:2-23.8 Eastern Standard Time Change

(a) On the last Sunday of April of each year, at 2:00 a.m., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Saving Time. In any municipality having a closing hour later than 2:00 a.m., the official time will then become 3:00 a.m. and the hours of sale will be calculated accordingly.

(b) On the last Sunday of October of each year, at 2:00 a.m., the clocks in each licensed premises will be turned one hour back in observance of Eastern Standard Time. In municipalities having a closing hour later than 2:00 a.m., the clocks will be immediately returned to 1:00 a.m. and hours of sale will be calculated accordingly.

(c) In either case, (a) or (b), licensed premises having closing hours of 2:00 a.m. or earlier, will be unaffected.

* * * *

* * * *

13:2-23.16 Prohibited Promotions

No license or registrant privileged to sell or solicit the sale of alcoholic beverages within this State shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

(a) offers to the public at large unlimited availability of any alcoholic beverage for a set price; or

(b) offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except branded or unique glassware or souvenirs in connection with a single purchase, or

(c) requires or allows a consumer to prepurchase more than one drink or product at a time via tickets, tokens, admission fees, two for one, or the like, as a condition for entry onto a licensed premises or as a requirement for service or entertainment thereon.

* * * *

13:2-23.21 Storage of alcoholic beverages

No licensee shall store any alcoholic beverage except at his licensed premises, or at a public warehouse licensed under the alcoholic beverage law, or at other premises pursuant to special permit first obtained from the Director of the Division of Alcoholic Beverage Control, provided, however, that nothing herein contained shall prohibit the storage of alcoholic beverages by a licensee upon the formerly licensed premises for a period not exceeding five days subsequent to the effective date of the transfer of the license to other premises[.] or for a period not to exceed 72 hours following delivery at the licensed premises of a fellow member of a cooperative purchasing agreement pursuant to Subchapter 26.

* * * *

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING
AND ADVERTISING

13:2-24.1 Discrimination in Terms of Sale

(a) Except as may otherwise be authorized by this Subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler, or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, be a party to, or assist in, any transaction or sale, or contract to sell;

(1) which discriminates against purchaser competitors, in that:

a. there is a different price or are different credit terms for different purchasers of alcoholic beverages of the same brand or trade name of like age, quality and quantity (including but not limited to proof and size), or

b. any discount, rebate, allowance or advertising service granted to a purchaser is over and above any discount, rebate, allowance, or advertising service available at the time of such transaction to competitors with respect to a sale of alcoholic beverages of the same brand or trade name of like age, quality and quantity.

(2) alcoholic beverages in any part of the State at prices lower than those charged by that person or entity elsewhere in the State for the purpose of destroying competition, or eliminating a competitor in the State.

(3) alcoholic beverages at unreasonably low prices for the purposes of destroying competition or eliminating a competitor.

(b) The provisions of the foregoing shall not prevent:

(1) differentials which make only due allowance for actual differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which alcoholic beverages products are sold or delivered to, or paid for by, purchasers including discounts for prompt payment;

(2) differences in terms of credit, when justified by history or risk, to a particular customer or account in bona fide transactions not otherwise in restraint of trade as is customary to the industry; the credit period usual and customary to the industry shall be deemed to be thirty days from date of delivery in the case of all sales of any alcoholic beverages to retailers[; or].

[(3) price changes from time to time where changes are in response to changing conditions affecting the market for or the marketability of alcoholic beverage products, such as, but not limited to, actual or imminent deterioration of perishable products, obsolescence of seasonal products, distress sales pursuant to court order, or sales in good faith in discontinuance of business in the product concerned.]

[DELETE]

* * * * *

* * * * *

[DELETE] [13:2-24.5 Supplier Price Filings]

[(a) Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers shall file with the Division a Current Price Listing to wholesalers containing as to each alcoholic beverage:

1. Its correct brand or trade name;
2. Its nature and type;
3. Its age and proof of alcoholic content when stated on the label;
4. The standard number of unit containers per standard case;
- [DELETE] 5. The capacity of each unit container; and
6. The bottle and standard case or container prices and, at the option of the manufacturer or supplier, the one-half and one-quarter standard case prices, which prices shall be individual for each alcoholic beverage brand and size and not in combination with any other alcoholic beverage brand and size.
7. All allowances, discounts, depletion credits or differentials which may be available and the periods of availability.

(b) Such filing shall be made with the Division not later than the 10th day of a month preceding the month for which it is to become first effective and such filing shall remain in effect as to each product not specifically amended by subsequent filing.

(c) Such filing shall be a public record and nothing herein shall preclude any filer from providing it directly to its registered distributors or wholesalers by mail, through sales personnel or through publication in trade journals.

[DELETE] (d) No filer of prices for distilled alcoholic beverages shall file a price or discount listing higher than the lowest price or lower than the highest discount at which any such distilled alcoholic beverage will be sold by the filer to any wholesaler or state agency which operates retail stores in any other State of the United States or in the District of Columbia.

(e) Such filings shall be provided to the Director separately from Brand Registration pursuant to Subchapter 33 and shall be provided in such form and accompanied by such fees as shall be established by the Director.]

13:2-24.5 Supplier Pricing and Marketing Information

Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers or distributors within this State shall:

(a) For a period of three years maintain on its licensed premises or other principal place of business made known to the Division in a readily retrievable fashion pursuant to Subchapter 29;

(1) A "Historical Price List," which shall contain the prices at which all products by brand, type, proof, age and size were offered for sale to the trade, inclusive of all discounts, allowances or differentials, and

(2) A "Marketing Manual," which shall contain, by category, on a chronological basis, all services, facilities, equipment, advertising and promotional items and programs offered to the trade or consumers, and

(b) By the first day of the month preceding the month for which they are to become effective, make available to all its wholesalers or distributors its prices, inclusive of all discounts, allowances or differentials, and

(c) Prior to any sale or delivery of distilled spirit alcoholic beverages, or annually by August 1 of each year, file with the Division a written statement under oath affirming that its prices to New Jersey wholesalers and distributors have not been and will not be a price or discount higher than the lowest price or lower than the highest discount which has been or will be offered to any wholesaler or distributor or state agency (which operates retail stores) in any other State of the United States or in the District of Columbia.

(Proposed amendment to N.J.A.C. 13:2-24.6 not adopted).

13:2-24.7 Marketing Initiatives

Subject to the foregoing provisions of this Subchapter, a licensed or registered manufacturer, supplier, importer, wholesaler or distributor may furnish or provide advertising or promotional materials to any retail licensee, except that samples may be provided to retailers, and donations of alcoholic beverages made to qualified industry trade organizations, only within the terms and conditions of a special permit first obtained from the Director, issued upon a petition establishing and defining its need and use and verifying that all taxes have been paid thereon.

13:2-24.8 Sales Below Cost - Prohibited

(a) Notwithstanding other provisions of this Subchapter, no wholesaler, distributor or other licensee, privileged to sell to retailers, and no retail licensee, shall offer to sell or sell alcoholic beverages at a price below "cost" except for authorized samples and donations pursuant to N.J.A.C. 13:2-24.7 or upon petition to and approved by the Director, pursuant to a bona fide "close out" sale. [consistent with N.J.A.C. 13:2-24.1(b)(3).]

(b) "Cost" is defined as the actual proportionate invoice price and freight charge to a distributor or wholesaler and the actual proportionate invoice price to a retailer, as the case may be, of any given container of an alcoholic beverage product, plus applicable State and Federal taxes. The actual invoice price shall be determined by the "last-in-first-out" method applying generally accepted accounting principles.

13:2-24.9 [Trade Buyer] Combination and Tied Sales

(a) Notwithstanding other provisions of this Subchapter, no [manufacturer, registrant, wholesaler, distributor or licensee privileged to sell alcoholic beverages to wholesalers, distributors, retailers, or other] licensee[s in this State] shall sell or offer to sell any alcoholic beverage product upon terms that permit purchase of that product, by size and price, only when purchased in conjunction with a different product or the same product in a different size.

etain (b) Except for sales to retailers of malt alcoholic beverages; no wholesale licensee shall offer to sell or sell any alcoholic beverage product in combination with another product. For purposes of this subsection, a sale of products which are identical, except for size, in mixed lots (a mixed size sale) is not a combination sale.

(c) Subject to N.J.S.A. 33:1-12, [N]nothing herein shall preclude a retail licensee from selling or offering for sale any product in combination with another product at a single unit price, provided that such unit price shall exceed the cost of the combined products and the individual unit price of each combined product is provided in advertising and shelf pricing.

Delete] [13:2-24.10 Promotional advertising; prohibitions]

Delete] [(a)No retail licensee shall allow, permit or suffer in or upon the licensed premises any advertising which utilizes promotional schemes unduly designed to increase the consumption of alcoholic beverages, via., "Open house", "singles night", tokens or tickets or admission fee redeemable for drinks only, all the alcoholic beverages you can drink for a set price, the absorption by the licensee of a patron's parking charge, gifts or souvenirs or trading stamps to be given with a purchase of alcoholic beverages, free drinks as an inducement to purchase package goods, the refunding of a percentage of the amount spent on drinks during a given period, the advertising of a gift or sale of alcoholic beverages for the benefit of charitable organization, any connotation of an increased value of purchase on alcoholic beverages ("savings", "bargains", "limited supply", "close out"), or any additional advertising scheme which is similarly promotional.

Delete] (b) The advertising of the existence of a "happy hour", "cocktail hour", or similar reduction in price per drink of alcoholic beverage during a specified period, or the existence of "free food", in or upon the licensed premises, is prohibited; provided, however, that a placard not visible from the exterior, not exceeding 12 inches by 24 inches located at each bar may advertise the reduction of the price per drink or the existence of "free food"; provided, further that decalcomania referring to the availability of the purchase of alcoholic beverages on credit may be placed in or upon the licensed premises, but may not be reproduced in other advertising media.]

[13:2-24.11] 13:2-24.10 Advertising and Consumer Protection

(a) No manufacturer, importer, registrant, wholesaler, distributor or retailer shall include in any advertising material or in any advertisement, directly or indirectly, any statement, illustration, design, device, name, symbol, sign or representation that:

- (1) is false or misleading;
- (2) is obscene;
- (3) contains the name of or depiction of any biblical character or religious character or symbol;
- (4) portrays a minor or child or items or symbols which are generally associated with children or which tends to induce minors [or] to purchase alcoholic beverages;
- (5) tends to create or give the impression that the use of an alcoholic beverage has curative or therapeutic effects or enhances athletic prowess;
- (6) offers an alcoholic beverage product for sale to consumers which is not immediately available in reasonable supply at the price, size and age specified, unless advertised at a stated limited quantity;
- [(7) offers any alcoholic beverage product in its original container for sale, by any means whatsoever, that physically or conceptually joins, or connects or combines it to the advertisement or promotion of any non-alcoholic beverage product except non-alcoholic accessory beverages; or

[DELETE]

- (8) offers any alcoholic beverage product for sale by or on behalf of licensees not identically owned, except as consistent with paragraph (b) of this regulation.

[DELETE]

(b) No manufacturer, importer, registrant, wholesaler, distributor or retailer may advertise in any form or manner whatsoever unless that individual licensee has paid for such advertising except that consistent with Title 33 and Regulation promulgated thereunder, and its "Marketing Manual," a manufacturer or wholesaler, in a product advertisement, may specify the availability of a particular alcoholic beverage product or products at identified retail outlets, provided that no reference is made to a price at which the products will be or are offered for sale;]

(7) offers alcoholic beverage pricing information in affiliation with other non-identically owned licensees in a communication which fails to truthfully disclose and prominently indicate (a) the identity of the individual licensee who established the pricing information, and (b) that the specific prices and products featured may not be available at all businesses represented or indicated as being affiliated.

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

13:2-26.1 Restrictions on Cooperative Purchases

(a) A Class C retail licensee, as defined in N.J.S. 33:1-12, may join with another Class C licensee in a cooperative agreement for the purchase and transportation of alcoholic beverages, provided that such agreement and activity shall conform to the following standards:

(1) No unlicensed person or entity may participate in any management capacity nor receive any compensation in connection with the purchase or transportation of alcoholic beverages; and

(2) the number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution licenses, as defined in N.J.S. 33:1-12 (3.) (a.), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses; and

(3) no cooperative agreement may prohibit any licensee from joining any other cooperative agreement; and

(4) no cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price; and

(5) any cooperative agreement may be withdrawn from by any licensee upon thirty days written notice and no penalties may be charged for such withdrawal; and

(6) all purchases on credit through or by cooperative agreement shall [be made only on terms requiring payment upon delivery, or in the case of multiple delivery, upon initial delivery or earlier; and], be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of Subchapters 24 and 39. Such credit terms shall include adequate assurances of payment by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative; and

(7) all individual purchases through or by cooperative agreement shall be separately invoiced consistent with Subchapter 39; and shall contain the cooperative's registration number, and

(8) all purchases through or by cooperative agreement shall be transported consistent with Subchapter 20, N.J.S. 33:1-13 and N.J.S. 33:1-28; and

(9) no licensed party to a cooperative agreement shall co-mingle inventory, funds or other assets[; and] inconsistent with this Subchapter and NJAC 13:2-23.21; and

(10) any purchase or transfer in violation of Title 33 or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement.

(11) Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if [multiple deliveries to licensees are required for an individual order] there exists no corresponding justification for the differential pursuant to NJAC 13:2-24.1(b)(1).

(b) No cooperative buying group may participate in any business transaction permitted by subsection (a) of this regulation unless the cooperative is registered with the Division in a form prescribed by the Director. Such registration shall include (i) the identity and State issued license numbers of the members; [and] (ii) a copy of the cooperative agreement[.

(c) No licensee shall, directly or indirectly, participate in any cooperative purchase unless the cooperative is registered pursuant to this regulation.] and (iii) the issuance of a special permit by the Director, which shall be renewable annually on August 1.

SUBCHAPTER 33: PRODUCT INFORMATION FILING--BRAND REGISTRATION

[13:2-33.3 Changes for good cause]

[DELETE] [The director may, upon adequate cause appearing therefor, suspend or defer the foregoing provisions as to the time of filing minimum consumer resale price listings, time of publication of minimum consumer resale price lists, and time of mailing to retailers, to permit changes in minimum consumer resale prices to take effect upon such shorter or longer notice as he may prescribe. Any minimum consumer resale price list and any minimum consumer resale price of a private label brand or [DELETE] exclusive brand then currently effective may be continued in effect after the scheduled publication date of the next succeeding minimum consumer resale price list or, in the case of private label brands and exclusive brands, after the scheduled effective date of the next succeeding minimum consumer resale price filing for such brands, and any price in such price list or of such private label brand or exclusive brand may be changed, temporarily, by announcement of the director upon his finding that an emergency exists.]

~~DELETE~~ SUBCHAPTER 36. WHOLESALE PRICES AND MAXIMUM REBATES, FREE GOODS, ALLOWANCES AND OTHER INDUCEMENTS

* * * * *

~~DELETE~~ 13:2-36.2 Deliveries; effective prices

All alcoholic beverages sold at reduced prices by manufacturers or wholesalers to wholesalers as provided in this subchapter, shall be delivered to and received by the wholesaler within the period for which the price reduction is effective, except that deliveries at reduced prices may be made to wholesalers by manufacturers and wholesalers during the seven days immediately preceding the first day of the period for which the reduced prices are to be in effect

* * * * *

SUBCHAPTER 36. REQUESTS FOR ADVISORY OPINIONS

13:2-36.1 Advisory Opinions

Other than in proceedings instituted pursuant to N.J.S.A. 52:14B-8 (Declaratory Rulings), a written non-hypothetical request for an interpretation, application, or other inquiry concerning the Division's regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability. Such requests and corresponding advisory opinions may be reproduced in Bulletins issued by the Division which are publically available upon subscription. Requests which are hypothetical in nature will not receive Division response.

The provisions of this regulation are to be considered of general applicability and may be relaxed in the discretion of the Director.

SUBCHAPTER 40. ISSUANCE OF IDENTIFICATION CARDS BY COUNTY CLERKS

* * * * *

13:2-40.1 Form of application; contents

Application for an identification card by residents of a county who shall have attained the [age of 18 years] legal age for purchase and consumption of alcoholic beverages may be filed with the county clerk in the county wherein said applicant resides and shall be in the following form:

* * * * *

JOSEPH H. LERNER
DIRECTOR

Dated: July 3, 1980

Executive Order No. 66 (1978) Expiration Date

Subchapters 4, 20, and 40 shall expire on July 3, 1985. Subchapters 23, 24, 26, 33 and 36 shall expire on April 12, 1984.

2. NOTICE TO WHOLESALERS CONCERNING ORDER OF NON-DELIVERY OF JUNE 10, 1980
N.J.A.C. 13:2-41.4.

RE: Transition Credit N.J.A.C. 13:2-41.4

I have this date issued an Order of Non-Delivery with respect to retail licensees pursuant to N.J.A.C. 13:2-41.4 (enclosed). The number of licensees involved has been reduced from 1735 on the May 1, 1980 Final Delinquency List to 1,111. Licensees were removed from the May 1, 1980 list due to full payment and/or repayment satisfaction agreements or non-renewal, bankruptcy or other legal impossibility, or failure of wholesalers to otherwise timely notify the Division of the delinquency. Some retailers may not have been removed due to failure on the part of wholesalers or distributors to timely notify the Division of payment or satisfaction agreements or to include the proper license name and number of the licensee involved as instructed in my Notice of May 9, 1980 (Bulletin 2354, Item 7). Cf N.J.A.C. 13:2-39.3(d)

I will continue to periodically remove retail licensees from the effect of the Non-Delivery Order as compliance with N.J.A.C. 13:2-41.4 occurs. All wholesalers and beer distributors are to continue to notify each other and the Division of any payment made in full for delivery transactions occurring prior to March 11, 1980 as previously instructed (Bulletin 2354, Item 7). Agreements to repay between wholesalers or distributors and retailers may continue to be submitted for my review. All such communications must contain the relevant licensees' correct name and State assigned license number.

JOSEPH H. LERNER
DIRECTOR

Dated: June 10, 1980

3. OPINION LETTER - TRANSITION CREDIT - RETAILER BREACH OF AGREEMENT TO REPAY WHOLESALER WILL NOT RESULT IN REINSERTION OF THE RETAILER ON THE ORDER OF NON-DELIVERY. N.J.A.C. 13:2-41.4.

June 27, 1980

Richard H. Salzman, President
--Peerless Beverage Company
Union, N. J.

Re: Transition Credit N.J.A.C. 13:2-41.4.

Dear Mr. Salzman:

In your letter of June 18, 1980 you have disclosed that several unidentified retailers with whom you reached repayment agreements pursuant to N.J.A.C. 13:2-41.4(c) have now reneged and are again delinquent. You have requested that the licensees involved be placed on the Non-Delivery Order originally issued effective June 7, 1980.

The basic purpose of the "transition credit" provisions of the recent amendments to Division regulations was to remove this Division from ongoing responsibilities as the central record repository for credit delinquency information concerning the retail level of the industry. To implement the underlying policy determination, a fixed period of time within which retailers were to make full payment to or enter repayment agreements with wholesalers to whom they were delinquent for deliveries completed prior to the effective date of "deregulation" (March 11, 1980) was established, ie June 7, 1980.

I have taken a fairly liberal posture in reviewing "repayment agreements" submitted pursuant to N.J.A.C. 13:2-41.4, placing substantial reliance on the good faith and business judgment of the parties involved. To do otherwise would have embarked the Division on a course which was inconsistent with its stated goal.

Having been the beneficiary of a "deregulation" program, which encourages economic competition and fosters unilateral business decisions, licensees must now also assume the responsibility for poor business judgments.

Your request that licensees who have breached repayment agreements be added to another Order of Non-Delivery is denied. Cf. N.J.A.C. 13:2-39.3(d)

JOSEPH H. LERNER
DIRECTOR

4. OPINION LETTER - BENEFICIAL INTEREST IN MORE THAN TWO RETAIL LICENSES.
N.J.S.A. 33:1-12.31.

July 17, 1980

J. William Barba, Esq.
c/o Shanley & Fisher, Esqs.
Newark, N. J.

RE: Advisory Opinion -
Beneficial Interest in More than
Two Retail Licenses
N.J.S.A. 33:1-12.31

Dear Mr. Barba:

Receipt is acknowledged of your letter of June 13, 1980 wherein you request an Advisory Opinion pursuant to N.J.A.C. 13:2-36.1 with respect to the proposed acquisition of a Plenary Retail Distribution license by Daylin, Inc., vis-a-vis the "two license limitation" provisions of N.J.S.A. 33:1-12.31.

You indicate that Daylin, Inc.'s corporate stock is owned 75% by W.R. Grace & Company (hereinafter "Grace") and 25% by W.R. Grace Ltd., a United Kingdom partnership. "Grace" is the parent corporation and stockholder in Far West Services, Inc., which holds two retail consumption licenses within this State. "Grace" is also a stockholder in Gilbert/Robinson, Inc., which holds a retail consumption license in this State.

Public Law of 1962, Chapter 152 §1, as amended, effective August 3, 1962, (N.J.S.A. 33:1-12.31 et seq.) provides in part:

On and after the effective date of this act no person, as the same is defined in R.S. 33:1-1, shall, except as hereinafter provided, acquire a beneficial interest in more than a total of two alcoholic beverage retail licenses, but nothing herein shall require any such person who has, on August 3, 1962, such an interest in more than two such licenses to surrender, dispose of, or release his interest in any such license or licenses. (Emphasis Added)

Another major relevant provision, N.J.S.A. 33:1-12.31 provides:

The provisions of this act shall not apply to the acquisition of an additional license or licenses or an interest therein, when such license is issued for use in connection with the operation of a hotel containing at least 50 sleeping rooms, or for use in connection with the operation of a restaurant, nor shall the provisions of this act affect the right of any person to dispose of an interest in a license or licenses by will or to the transfer of such an interest by descent and distribution.

Any additional license acquired for use in connection with a restaurant, as herein authorized, shall be limited, however, to the sale of alcoholic beverages for consumption on the licensed premises only.
(Emphasis Added)

While not particularly specified, it is assumed that the last acquired on-premises consumption licenses in which "Grace" has an interest through its stock ownership is within an exception under N.J.S.A. 33:1-12.31 or 12.32. The license sought to be acquired is a retail distribution license, i.e., "package store". See, N.J.S.A. 33:1-12 (3)(a).

In reply to the inquiry, the relevant statutes (N.J.S.A. 33:1-12.31 through 12.38) quite explicitly prohibit the proposed acquisition. Excluding (1) those licenses "grandfathered" (N.J.S.A. 33:1-12.31); (2) any membership interest in a club licensee (N.J.S.A. 33:1-22.34); (3) to a limited extent, ownership interests acquired by will, descent, distribution or from parents or grandparents (N.J.S.A. 33:1-12.31, 12.33 and 12.36 (b)); and (4) an interest of not more than 10% in publicly or over-the-counter regularly traded corporate shares; no person may acquire a beneficial interest in more than two licenses unless the additional license is used only in connection with the operation of a hotel or restaurant. In the latter instance, i.e., restaurant, such additional licenses may not sell "package goods" N.J.S.A. 33:1-12.32.

Thus, it is clear that such an additional retail license may not be a "package store" (plenary retail distribution) or "warm beer" (limited retail distribution) license. Nor may a plenary or seasonal retail consumption license be acquired for use as a tavern or disco. The only additional permissible use is in connection with the operation of a minimum 50 room hotel or restaurant.

You submit that the provisions of the Act should not apply to the proposal herein because N.J.S.A. 33:1-12.31 provides that "no person" shall acquire the additional beneficial interest in a license and that the definition of "person" in N.J.S.A. 33:1-1(4) makes no specific reference to "stockholders". The suggested interpretation is rejected.

N.J.S.A. 33:1-25 specifically requires any stockholder holding 1% or more of the stock to be qualified for licensure and answer all questions on the license application form. The determination of multiple interests in a license is not dependant on the name or identity of the licensee but the particular number of licenses in which an individual person has some form of interest, be it as a sole proprietor, partner, association or stockholder of a corporate licensee. The purpose of the "beneficial interest" phrase in the Act was to "include ownership interests in the broad or equitable sense rather than in the narrow or technical sense". Grand Union vs. Sills, 43 N.J. 390, 409 (1964). It would frustrate the law to conclude that an individual corporate "person" could not acquire an additional license in its name, but the same corporate "person" (because it happens to be a stockholder) would not be simultaneously barred.

In N.J.S.A. 33:1-12.36 the Legislature addressed stockholder interests as it relates to an exception to the multiple interest prohibition; articulating that an interest in not more than 10% of the shares of certain types of corporations would not be a beneficial interest offensive to the Act. Having stated what type of stockholder interests would be permissible, any stock interest outside the perimeters of the Legislature exception must be prohibited.

On the facts submitted, "Grace" already has a beneficial interest in three retail licenses. The proposed additional license, by its enumerated privileges under Title 33 and under the submitted proposal to use it as a package store in a discount department store, does not fall within the hotel or restaurant exceptions. Accordingly, you are advised that the proposed acquisition would be contrary to N.J.S.A. 33:1-12.31 et seq.

JOSEPH H. LERNER
DIRECTOR

5. OPINION LETTER - CONTROL OVER A LICENSED PREMISES - CONCESSION AND LEASE AGREEMENTS.

September 19, 1980

Waters, McPherson, Hudzin & McNeil, Esqs.
Jersey City, N. J.

Re: Vincent Arnot
Restaurant Service Contract
Your File No. 4428

Dear Mr. O'Shea:

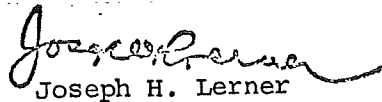
This is with reference to your recent inquiry concerning the granting by the holder of an alcoholic beverage license of a food service concession on the licensed premises.

You are advised that a liquor license must always retain full possession and control over all portions of the licensed premises whereon alcoholic beverages may be sold, served or stored. Hence, where a licensee leases any part of his licensed premises to another he thereby loses the requisite possession and control over the leased part. The licensee must exclude the leased portion from his licensed premises and may no longer sell or serve any alcoholic beverages in the leased portion and may not allow, permit or suffer any alcoholic beverage drinks sold and served in the licensed portion to be taken into the leased portion. It follows, also, that no wine list or any other reference to alcoholic beverages may be kept upon the unlicensed portion.

On the other hand, there is no objection to the licensee agreeing to a restaurant concession whereby a restaurant concessionaire is given the privilege (and not a lease) to come and be upon the licensed premises for the purpose of selling and serving food. In the event of a concession agreement, as distinguished from a lease, alcoholic beverages may be sold and served in all portions of the licensed premises, including the licensed restaurant portion, and, of course, a wine list or other alcoholic beverage menu may be kept there.

For your further guidance we point out that when a restaurant concession is given by a licensee to another, the following conditions must be complied with:

1. Everyone engaged in the concessionaire's business at the licensed premises must satisfy the various qualifications as to persons employed on licensed premises. For example, they must be fully qualified as to age and free from conviction of crime involving moral turpitude. If not so qualified, they must obtain employment permits from this Division. See New Jersey Administrative Code 13:2 - SUBCHAPTER 14, governing the qualifications of employees (but do not be misled by the exceptions in those regulations relating to bona fide restaurants since those exceptions prevail only when the licensee is conducting the restaurant business). Cf. N.J.S.A. 33:1-26.
2. Alcoholic beverages may be sold and served only by the liquor licensee and his bona fide employees. Neither the concessionaire nor any persons solely in the concessionaire's employ may take orders for or sell or serve or otherwise handle alcoholic beverages. However (if a man can serve two masters), we have no objection to a person being upon the payroll of both the licensee and the concessionaire, provided that such person is a bona fide employee of each party. In this connection, we may warn that it is not permissible for the concessionaire to reimburse the licensee for the payroll expense incurred by the licensee in meeting salaries paid to employees of the concessionaire since this would be nothing more than an evasion of the prohibition against persons solely in the employ of the concessionaire taking orders for selling, serving or otherwise handling alcoholic beverages.
3. The records and receipts of the alcoholic beverage business must be kept separate and apart from the records and receipts of the concessionaire's business.
4. The concessionaire may not participate in any way, directly or indirectly, in any proceeds from the sale of alcoholic beverages.
5. The licensee shall be responsible for any unlawful acts or regulatory violations engaged in, or allowed, permitted or suffered, by the concessionaire on the licensed premises. Re McCarthy's Bar, Inc. Bulletin 2297, Item 5.


Joseph H. Lerner